IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 203 OF 1996

The State of Maharashtra .. Appellant

Vs.

1. Baburao Bhujanga Patil
Age-40 yrs.
2. Maruti Bhujanga Patil
Age-45 yrs.
Both R/o Khebavade, Tal. Karveer,
Dist.: Kolhapur. .. Respondents

Mr. U.V. Nikam, APP for Appellant-State.
Mr. Niranjan Mundargi for Respondents-Accused.

CORAM: S.S. PARKAR & ANOOP V. MOHTA,JJ.

Date : August 18, 2005.

ORAL JUDGMENT (Per S.S. Parkar,J.):

1. This appeal is filed by the State against the order of acquittal recorded by the Assistant Sessions Judge, Kolhapur acquitting both the respondents-accused of the offences under Sections 307, 324, 504, 506 read with Section 34 of IPC and for offence under Section 27 of the Arms Act in Sessions Case No.121 of 1993.

2. The prosecution case briefly stated is as follows :-

. On the date of the incident i.e. 13/3/1991 at about 9.30 p.m. the complainant was chitchatting with other prosecution witnesses in front of the complainant's house. That time both the accused came there. Accused No.1 was holding gun in his hand. Addressing the complainant, he told him that he got litigation pending between them decided in his favour and, therefore, he would not leave him and would kill him pointing out the gun at him. The complainant and others turned the barrel of the gun towards sky when the fire was shot from the gun. Accused No.2 then lifted a stone and hit the same on the head of the complainant, as a result of which complainant got injuries on his head. Thereafter both the accused ran away from the place. The complainant was taken to the C.P.R. Hospital at Kolhapur. The police came at the scene and recorded the statement of the injured complainant which is at Exh.15. Crime was registered under C.R. No.83 of 1991 for offences under Sections 307, 324, 504 read with Section 34 of IPC against both the accused and for offence under Section 27 of the Arms Act against accused no.1.

3. The police then commenced investigation,

attached the clothes of the complainant and drew the spot panchanama. Accused were also arrested and the empty cartridge was attached from the place of offence. From the house of the accused gun and live cartridges were attached. After completion of the investigation the charge-sheet was filed for the above offences. The learned JMFC, Kolhapur committed the case to the Sessions Court.

4. In the Sessions Court charges were framed against both the accused for offences under Sections 307, 324, 504 and 506 read with Section 34 of IPC and against accused no.1 for offence under Section 27 of the Arms Act also. As the accused pleaded not guilty, 11 witnesses were examined on behalf of the prosecution, which are as follows:-

. P.W.1 is Vilas Patil who acted as panch for the panchanama of attachment of clothes of the injured complainant, which is at Exh.11. P.W.2 is Vijay Patil who acted as panch for spot panchanama Exh.13. P.W.3 is complainant Pandurang Todkar. P.W. 4 Dnyandeo Patil, P.W.5 Hindurao Patil and P.W. 6 Ananda Karade are eye witnesses to the incident. P.W.7 is Police

Head Constable Vijay Dhanawade, who had carried the muddemal articles to the office of C.A. at Mumbai from Karveer Police Station. P.W.8 is Dr. Ramdas Mane who examined the injured. P.W.9 is Police Head Constable Baburao Chavan who recorded the F.I.R. (Exh.15). P.W. 10 is Police Head Constable Krushna Patil who registered the offence. P.W.11 is P.I. Jaywant Nandurkar who carried out the investigation in the case. The defence of the accused was of total denial. After considering the evidence on record, the trial court acquitted the respondents-accused of all the offences with which they were charged. Aggrieved by the aforesaid order of acquittal, the State has come in appeal.

5. With the assistance of the Advocates, we went through the evidence on record and also perused the Judgment of the trial court. We find that the trial court has acquitted the accused by giving benefit of doubt on the ground of minor discrepancies in the evidence of eye witnesses.

6. The incident had taken place in the night in front of the house of the complainant. Both the

complainant and the accused are relatives. There was dispute between the parties about their property in respect of which litigation was going on in the Civil Court. The complainant had succeeded in that litigation and, therefore, the accused, who are brothers, had borne grudge against the complainant. The incident had taken place at about 9.30 p.m. and thereafter immediately complainant was taken to the CPR Hospital, Kolhapur, where his complaint was recorded at about 11.30 p.m. The incident had taken place in village Khebavade. The offence was registered at Karveer Police Station, that is the Taluka place under whose jurisdiction the offence had taken place. Considering the fact that incident had taken place in the village at night from where the injured was taken to CPR Hospital, Kolhapur City, which is the District place and the FIR was lodged in Karveer Police Station i.e. Taluka place, there can be no doubt that FIR was lodged at the earliest after the incident had taken place. The distance between Khebavade village and Kolhapur City is 20 Kms.

7. In the FIR names of both the accused are given

and also the role played by them. In the FIR itself the complainant has stated that when the gun was aimed at him, he pushed the barrel of the gun upwards to avoid possible injury to him. As a result of the prompt action taken by the complainant, the firing was in the sky. The empty cartridge was found at the place of offence which was attached under spot panchanama. The only difference is that in the deposition the complainant tried to improve by saying that the gun was loaded in front of him by accused no.1. Secondly in the deposition he has stated that all the four eye witnesses, including the complainant, had turned the barrel of the gun towards the sky and thus could avoid the possible injury by gun. It is the case of the prosecution that after firing from the gun towards the sky, accused no.2 hit a stone on the head of the complainant causing head injuries to him and thereafter both of them ran away. The trial court has, however, acquitted the accused of the offence under Section 307 of IPC on the ground that in order to attract the offence under Section 307 of IPC, not only there must be firing from the gun but firing must be towards the complainant. We do not think that it is necessary in all circumstances. Undoubtedly there

is evidence that the gun was aimed at the complainant and the accused no.1 had set his finger on the trigger but by the time the trigger was pulled, the barrel of the gun was lifted upwards by the complainant and the witnesses. However, since there is an improvement in the evidence of the complainant and the other eye witnesses as to whether the complainant had alone changed the direction of the gun, as stated in the FIR or it was the complainant along with other eye witensses had done so, as deposed by the eye witnesses and there was an improvement with regard to the loading of the gun with cartridge at the place of offence, we do not feel it expedient to interfere in the finding of the trial court in an appeal against the order of acquittal.

8. As regards the assault on the complainant's head is concerned, there is evidence of complainant P.W.3 Pandurang Todkar, corroborated by the complaint immediately lodged by the injured and the medical evidence as well as supported by eye witnesses Dnyandeo Patil P.W.4 and Hindurao Patil P.W.5. Merely because the other eye witnesses are related to the complainant, their evidence cannot be discarded. No

doubt there is discrepancy as to whether other persons had collected at the place of offence or not. While one eye witness said that no one had come, the other eye witness has stated that people had gathered there. The question is at what point of time the people must have gathered. When there was firing from the gun people must have come out to see what had happened but they may not have seen the assault. When the complainant and the witnesses had caught hold the gun carried by accused no.1, accused no.2 hit complainant on his head with a stone. Therefore, it was not likely that the persons who had collected could have seen either the firing of the gun by accused no.1 or assault by accused no.2 with a stone. The accused immediately ran away. Even if it is assumed that the people had gathered and had witnessed the incident, we cannot forget that normally people would not come forward to give evidence against the accused. Here the accused was carrying a gun with him and, therefore, any witness from the locality would be scared to depose or even give statement against accused no.1.

9. The evidence of the complainant is

corroborated by the complaint as regards the assault by accused no.2 with a stone and is supported by the other eye witnesses to the incident. That evidence is also corroborated by the medical evidence of Dr. Mane P.W.8. Dr. Mane has deposed that complainant had received following two injuries on his head:-

(a) C.L.W. Lt. parietal region 3 cm x 1/2 cm.

(b) C.L.W. Lt. occipital region 2.5 cm. x 1/2 cm.

. According to the doctor those injuries were caused by hard and blunt object. There was bleeding. The complainant was admitted to the hospital on the night of 13/3/1991 and was discharged on 20/3/1991. He has deposed that both the injuries were possible by Article No.4, which is a stone attached from the spot, having blood on it. As per the spot panchanama (Exh.13) the stone was square in shape, being 7 inch long and about 4 and 1/2 inch in width. As per C.A. report dated 25/6/1991 (Exh.39) the said stone was stained with blood but the blood group could not be

detected. Even the full shirt and banian of the complainant which were attached under panchanama Exh.11 were found stained with blood of group "A".

10. Thus, the evidence of assault made by accused no.2 with a stone cannot be doubted at all. The trial court has given benefit by referring to the evidence that eye witnesses had stated about one assault with a stone on the head of the complainant by accused no.2, but the injuries found on the head of the complainant were two in number. He has doubted causing of two injuries on the head of the complainant with one stone at one stroke. First of all there is no major inconsistency in the medical evidence and the ocular evidence and, therefore, that benefit could not have been given to the accused. The injuries caused on the head of the complainant were contused lacerated wounds which were possible by the stone (Article No.4), which was attached from the place of offence and was found blood stained as per the C.A. report. Secondly, Dr. Mane has deposed that both the injuries could be possible by Article No.4 in one stroke. He has stated in his cross-examination that both those injuries were possible in one stroke by Article No.4 as there was a

gap in the stone. As the injured complainant was corroborated by the FIR and other eye witnesses without any omissions or contradictions, the injuries caused by accused no.2 cannot be doubted when the injury of C.L.W. can be caused with a stone like Article No.4 which was hit on the head of the complainant. The trial court was, therefore, absolutely wrong in giving benefit to the accused. The ocular evidence was not absolutely inconsistent with the medical evidence.

11. Both the accused are brothers and had come to the place, where the complainant and the other witnesses were chitchatting, armed with a gun. From the words uttered by accused no.1 and the fact that in the night accused no.1 had come there with a loaded gun and having aimed and fired from the gun, there can be no doubt that the accused had intention to assault the complainant. Because of the previous enmity due to the litigation in the court between two sides, there was motive against the accused. The trial court has completely lost sight of the fact that charge was framed against the accused for offences under Sections 504 and 506 of IPC also. There is clear evidence of

the witnesses about the criminal intimidation held out to the complainant by accused no.1. The trial court has simply ignored the offence under Section 506 of IPC and has not even dealt with or discussed about the said offence. The complainant has deposed that when accused persons came to the place where he was chitchatting with other eye witnesses, accused no.1 said that complainant got litigation about the property decided in his favour and, therefore, he would kill him and aimed the gun towards his chest. This is corroborated by the FIR as well as by the eye witnesses.

12. Even the charge for offence under Section 27 of the Arms Act, 1959 has been just brushed aside by the trial court by observing that mere examining the panch witnesses P.Ws.1 and 2 is not sufficient to prove the guilt of the accused. The trial court wrongly disbelieved the witnesses on the ground that persons from the neighbourhood who had gathered at the spot after hearing the firing of the gun were not examined. Though prosecution has not led evidence about the licence nor the accused had put up the defence that he was having licence in respect of the gun which

was attached from the house of the accused during the course of the investigation, it has come on record at the appellate stage in this court when accused no.1 applied for return of the gun to him that he was holding license for possessing the gun. Accused no.1 is an ex-military man and was employed as security officer and, therefore, he was possessing a gun. At the time of attachment of the gun from the house of the accused no.1, the police had recovered a large number of cartridges from his house. Both the gun as well as the live cartridges recovered from the house of the accused no.1 and the empty cartridge found at the spot of incident were sent to the office of C.A. for examination. As per the C.A. report cartridges attached from the house could be successfully test fired from the gun belonging to accused no.1. The said report dated 2/7/1991 Exh.38 also states that the shot-gun attached from the house of the accused no.1 was used for firing prior to its receipt in the Laboratory and that it was in working order. The empty cartridge was also recovered from the spot under a spot panchanama. Though the offence under Section 27 of the Arms Act was not established as the accused was having license for possessing the gun, but the

lesser offence under Section 30 of the Arms Act has been clearly proved against accused no.1 for contravening the condition of a license. The accused no.1 had undoubtedly misused his gun and, therefore, he is liable to be punished under Section 30 of the Arms Act.

13. In view of what is discussed above, we are of the view that prosecution has proved beyond doubt the offences under Sections 324 and 506 of IPC as well as offence under Section 30 of the Arms Act, 1959. The incident had taken place in March, 1991 i.e. about 14 years back and, therefore, the learned Advocate appearing for the respondents-accused has urged that after the lapse of more than 14 years the accused may not be sent to prison but instead fine may be imposed. Section 324 of IPC is punishable with imprisonment of either description for a term which may extend to three years or with fine or with both. The offence under Section 506 of IPC is attended with punishment of imprisonment of either description which may extend to 7 years or with fine or with both if there was threat to cause death. As regards offence under Section 30 of the Arms Act is concerned, the

punishment prescribed is imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both. From the record we find that neither of the accused had been in custody any time as they had obtained anticipatory bail. Both the accused were shown arrested on 20/3/1991 and released on bail on the same day. Though none of the accused persons was in custody any time, we are of the view that since the option is given under all the aforesaid provisions to impose fine only, due to the passage of time, it would be desirable to impose fine only against the accused persons.

14. In the result, the appeal is allowed. The order of acquittal recorded by the Assistant Sessions Judge, Kolhapur by his Judgment and Order dated 29/11/1995 in Sessions Case No.121 of 1993 is set aside and the respondents-accused are convicted and sentenced as follows:-

. Accused No.1-Baburao Bhujanga Patil is convicted for offence under Section 506, Part II of IPC and sentenced to pay a fine of Rs.5000/- in default to suffer imprisonment for six months. He is

also convicted for offence under Section 30 of the Arms Act, 1959 and sentenced to pay a fine of Rs.1000/- in default to suffer imprisonment for one month.

. Accused No.2 - Maruti Bhujanga Patil is convicted for offence under Section 324 of IPC and sentenced to pay a fine of Rs.5000/- in default to suffer imprisonment for six months.

. The acquittal order of the respondents-accused on other counts is confirmed.

. On the request of the learned Advocate for the respondents-accused, respondents-accused are given four weeks' time to deposit the fine amount. If the fine amount is not deposited within the said period, the accused shall be liable to be taken into custody at the expiry of four weeks.

(S.S. Parkar,J.)

(Anoop V. Mohta,J.)